

AMENDED IN ASSEMBLY JUNE 18, 2013

AMENDED IN SENATE MAY 8, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 419

Introduced by Senator Block

February 21, 2013

An act to amend Sections 1203.2 *and* 4019 of, and to add and repeal Section 1203.35 of, the Penal Code, relating to supervised persons.

LEGISLATIVE COUNSEL'S DIGEST

SB 419, as amended, Block. Supervised persons: flash incarceration.

(1) Existing law authorizes a probation officer, parole officer, or peace officer, at any time during the period of supervision of a person released on probation, conditional sentence, summary probation, or mandatory supervision, or when that person is subject to revocation of postrelease community supervision or revocation of parole supervision, to, without warrant or other process and at any time until the final disposition of the case, rearrest the supervised person and bring him or her before the court or the court may, in its discretion, issue a warrant for that person's rearrest. Existing law additionally authorizes, upon rearrest or upon the issuance of a warrant for rearrest, the court to revoke and terminate the supervision of the person if the interests of justice so require and the court, in its judgment, has reason to believe that the person has, among other things, violated any of the conditions of his or her supervision. Existing law specifies that nothing in those provisions affects the authority of the supervising agency to impose intermediate sanctions, including flash incarceration, to persons supervised on parole or postrelease community supervision, as specified.

This bill would specify that nothing in the above provisions affects the authority of the supervising agency to impose intermediate sanctions, including flash incarceration, not only to persons supervised on parole or postrelease community supervision, as specified, but also to persons on court-ordered probation or mandatory supervision.

(2) Existing law requires postrelease community supervision to include specified conditions, including, among other things, that the person obey all laws and waive any right to a court hearing prior to the imposition of a period of flash incarceration in a county jail of not more than 10 consecutive days for any violation of his or her postrelease supervision conditions. Existing law permits each county agency responsible for postrelease supervision to determine additional specified appropriate conditions of supervision consistent with public safety, including the use of continuous electronic monitoring, and flash incarceration in a county jail. Existing law encourages periods of flash incarceration as one method of punishment for violations of an offender's condition of postrelease supervision.

This bill would, until January 1, 2018, require the court, in any case where the court grants probation or imposes a sentence that includes mandatory supervision, to authorize the agency responsible for that probation or mandatory supervision to use flash incarceration for any violation of the conditions of that probation or mandatory supervision if, at the time of granting probation or ordering mandatory supervision, the court obtains from the defendant a waiver to a court hearing prior to the imposition of a period of flash incarceration. The bill would exempt from the imposition of flash incarceration under these circumstances any defendant convicted of a nonviolent drug possession offense who receives probation.

(3) Existing law requires that for each 4-day period in which a prisoner is confined in or committed to a facility, one day be deducted from his or her period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor and an additional day be deducted from his or her period of confinement unless he or she has not satisfactorily complied with the reasonable rules and regulations of the facility. Existing law specifies that no credits may be earned for periods of flash incarceration imposed on persons subject to parole supervision or postrelease supervision.

This bill would prohibit a person on probation or subject to mandatory supervision from earning credits for periods of flash incarceration.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.2 of the Penal Code is amended to
2 read:

3 1203.2. (a) At any time during the period of supervision of a
4 person (1) released on probation under the care of a probation
5 officer pursuant to this chapter, (2) released on conditional sentence
6 or summary probation not under the care of a probation officer,
7 (3) placed on mandatory supervision pursuant to subparagraph (B)
8 of paragraph (5) of subdivision (h) of Section 1170, (4) subject to
9 revocation of postrelease community supervision pursuant to
10 Section 3455, or (5) subject to revocation of parole supervision
11 pursuant to Section 3000.08, if any probation officer, parole officer,
12 or peace officer has probable cause to believe that the supervised
13 person is violating any term or condition of his or her supervision,
14 the officer may, without warrant or other process and at any time
15 until the final disposition of the case, rearrest the supervised person
16 and bring him or her before the court or the court may, in its
17 discretion, issue a warrant for his or her rearrest. Upon such
18 rearrest, or upon the issuance of a warrant for rearrest the court
19 may revoke and terminate the supervision of the person if the
20 interests of justice so require and the court, in its judgment, has
21 reason to believe from the report of the probation or parole officer
22 or otherwise that the person has violated any of the conditions of
23 his or her supervision, has become abandoned to improper
24 associates or a vicious life, or has subsequently committed other
25 offenses, regardless whether he or she has been prosecuted for
26 such offenses. However, the court shall not terminate parole
27 pursuant to this section. Supervision shall not be revoked for failure
28 of a person to make restitution imposed as a condition of
29 supervision unless the court determines that the defendant has
30 willfully failed to pay and has the ability to pay. Restitution shall
31 be consistent with a person's ability to pay. The revocation,
32 summary or otherwise, shall serve to toll the running of the period
33 of supervision.

34 (b) (1) Upon its own motion or upon the petition of the
35 supervised person, the probation or parole officer or the district

1 attorney of the county in which the person is supervised, the court
2 may modify, revoke, or terminate supervision of the person
3 pursuant to this subdivision, except that the court shall not
4 terminate parole pursuant to this section. A person supervised on
5 parole or postrelease community supervision pursuant to Section
6 3455 may not petition the court pursuant to this section for early
7 release from supervision, and a petition under this section shall
8 not be filed solely for the purpose of modifying parole. Nothing
9 in this section shall prohibit the court from modifying parole when
10 acting on its own motion or a petition to revoke parole. The court
11 shall give notice of its motion, and the probation or parole officer
12 or the district attorney shall give notice of his or her petition to the
13 supervised person, his or her attorney of record, and the district
14 attorney or the probation or parole officer, as the case may be. The
15 supervised person shall give notice of his or her petition to the
16 probation or parole officer and notice of any motion or petition
17 shall be given to the district attorney in all cases. The court shall
18 refer its motion or the petition to the probation or parole officer.
19 After the receipt of a written report from the probation or parole
20 officer, the court shall read and consider the report and either its
21 motion or the petition and may modify, revoke, or terminate the
22 supervision of the supervised person upon the grounds set forth in
23 subdivision (a) if the interests of justice so require.

24 (2) The notice required by this subdivision may be given to the
25 supervised person upon his or her first court appearance in the
26 proceeding. Upon the agreement by the supervised person in
27 writing to the specific terms of a modification or termination of a
28 specific term of supervision, any requirement that the supervised
29 person make a personal appearance in court for the purpose of a
30 modification or termination shall be waived. Prior to the
31 modification or termination and waiver of appearance, the
32 supervised person shall be informed of his or her right to consult
33 with counsel, and if indigent the right to secure court appointed
34 counsel. If the supervised person waives his or her right to counsel
35 a written waiver shall be required. If the supervised person consults
36 with counsel and thereafter agrees to a modification, revocation,
37 or termination of the term of supervision and waiver of personal
38 appearance, the agreement shall be signed by counsel showing
39 approval for the modification or termination and waiver.

1 (c) Upon any revocation and termination of probation the court
2 may, if the sentence has been suspended, pronounce judgment for
3 any time within the longest period for which the person might have
4 been sentenced. However, if the judgment has been pronounced
5 and the execution thereof has been suspended, the court may revoke
6 the suspension and order that the judgment shall be in full force
7 and effect. In either case, the person shall be delivered over to the
8 proper officer to serve his or her sentence, less any credits herein
9 provided for.

10 (d) In any case of revocation and termination of probation,
11 including, but not limited to, cases in which the judgment has been
12 pronounced and the execution thereof has been suspended, upon
13 the revocation and termination, the court may, in lieu of any other
14 sentence, commit the person to the Department of Corrections and
15 Rehabilitation, Division of Juvenile Facilities if he or she is
16 otherwise eligible for such commitment.

17 (e) If probation has been revoked before the judgment has been
18 pronounced, the order revoking probation may be set aside for
19 good cause upon motion made before pronouncement of judgment.
20 If probation has been revoked after the judgment has been
21 pronounced, the judgment and the order which revoked the
22 probation may be set aside for good cause within 30 days after the
23 court has notice that the execution of the sentence has commenced.
24 If an order setting aside the judgment, the revocation of probation,
25 or both is made after the expiration of the probationary period, the
26 court may again place the person on probation for that period and
27 with those terms and conditions as it could have done immediately
28 following conviction.

29 (f) As used in this section, the following definitions shall apply:

30 (1) "Court" means a judge, magistrate, or revocation hearing
31 officer described in Section 71622.5 of the Government Code.

32 (2) "Probation officer" means a probation officer as described
33 in Section 1203 or an officer of the agency designated by the board
34 of supervisors of a county to implement postrelease community
35 supervision pursuant to Section 3451.

36 (3) "Supervised person" means a person who satisfies any of
37 the following:

38 (A) He or she is released on probation subject to the supervision
39 of a probation officer.

1 (B) He or she is released on conditional sentence or summary
2 probation not under the care of a probation officer.

3 (C) He or she is subject to mandatory supervision pursuant to
4 subparagraph (B) of paragraph (5) of subdivision (h) of Section
5 1170.

6 (D) He or she is subject to revocation of postrelease community
7 supervision pursuant to Section 3455.

8 (E) He or she is subject to revocation of parole pursuant to
9 Section 3000.08.

10 (g) Nothing in this section affects the authority of the supervising
11 agency to impose on a person intermediate sanctions, including
12 flash incarceration, if the person is subject to any of the following:

13 (1) Parole supervision pursuant to Section 3000.08.

14 (2) Postrelease community supervision pursuant to Part 3
15 (commencing with Section 3450) of Title 2.05.

16 (3) Court-ordered probation.

17 (4) Mandatory supervision pursuant to paragraph (5) of
18 subdivision (h) of Section 1170.

19 SEC. 2. Section 1203.35 is added to the Penal Code,
20 immediately following Section 1203.3, to read:

21 1203.35. (a) In any case where the court grants probation or
22 imposes a sentence that includes mandatory supervision pursuant
23 to paragraph (5) of subdivision (h) of Section 1170, the court shall
24 authorize the agency responsible for that probation or mandatory
25 supervision to use flash incarceration for any violation of the
26 conditions of probation or mandatory supervision if, at the time
27 of granting probation or ordering mandatory supervision, the court
28 obtains from the defendant a waiver to a court hearing prior to the
29 imposition of a period of flash incarceration.

30 (b) For purposes of this chapter, “flash incarceration” is a period
31 of detention in ~~the~~ a county jail due to a violation of an

32 offender’s conditions of probation or mandatory supervision.
33 The length of the detention period may range between one and 10
34 consecutive days. Flash incarceration is a tool that may be used
35 by each county agency responsible for probation or mandatory
36 supervision. Shorter, but if necessary more frequent, periods of
37 detention for violations of an offender’s probation or mandatory
38 supervision shall appropriately punish an offender while preventing
39 the disruption in a work or home establishment that typically arises
40 from longer term revocations.

1 (c) This section shall not apply to any defendant sentenced
2 pursuant to Section 1210.1.

3 (d) This section shall remain in effect only until January 1, 2018,
4 and as of that date is repealed, unless a later enacted statute, that
5 is enacted before January 1, 2018, deletes or extends that date.

6 *SEC. 3. Section 4019 of the Penal Code is amended to read:*

7 4019. (a) The provisions of this section shall apply in all of
8 the following cases:

9 (1) When a prisoner is confined in or committed to a county
10 jail, industrial farm, or road camp, or any city jail, industrial farm,
11 or road camp, including all days of custody from the date of arrest
12 to the date on which the serving of the sentence commences, under
13 a judgment of imprisonment, or a fine and imprisonment until the
14 fine is paid in a criminal action or proceeding.

15 (2) When a prisoner is confined in or committed to the county
16 jail, industrial farm, or road camp or any city jail, industrial farm,
17 or road camp as a condition of probation after suspension of
18 imposition of a sentence or suspension of execution of sentence,
19 in a criminal action or proceeding.

20 (3) When a prisoner is confined in or committed to the county
21 jail, industrial farm, or road camp or any city jail, industrial farm,
22 or road camp for a definite period of time for contempt pursuant
23 to a proceeding, other than a criminal action or proceeding.

24 (4) When a prisoner is confined in a county jail, industrial farm,
25 or road camp, or a city jail, industrial farm, or road camp following
26 arrest and prior to the imposition of sentence for a felony
27 conviction.

28 (5) When a prisoner is confined in a county jail, industrial farm,
29 or road camp, or a city jail, industrial farm, or road camp as part
30 of custodial sanction imposed following a violation of postrelease
31 community supervision or parole.

32 (6) When a prisoner is confined in a county jail, industrial farm,
33 or road camp, or a city jail, industrial farm, or road camp as a result
34 of a sentence imposed pursuant to subdivision (h) of Section 1170.

35 (b) Subject to the provisions of subdivision (d), for each four-day
36 period in which a prisoner is confined in or committed to a facility
37 as specified in this section, one day shall be deducted from his or
38 her period of confinement unless it appears by the record that the
39 prisoner has refused to satisfactorily perform labor as assigned by

1 the sheriff, chief of police, or superintendent of an industrial farm
2 or road camp.

3 (c) For each four-day period in which a prisoner is confined in
4 or committed to a facility as specified in this section, one day shall
5 be deducted from his or her period of confinement unless it appears
6 by the record that the prisoner has not satisfactorily complied with
7 the reasonable rules and regulations established by the sheriff,
8 chief of police, or superintendent of an industrial farm or road
9 camp.

10 (d) Nothing in this section shall be construed to require the
11 sheriff, chief of police, or superintendent of an industrial farm or
12 road camp to assign labor to a prisoner if it appears from the record
13 that the prisoner has refused to satisfactorily perform labor as
14 assigned or that the prisoner has not satisfactorily complied with
15 the reasonable rules and regulations of the sheriff, chief of police,
16 or superintendent of any industrial farm or road camp.

17 (e) No deduction may be made under this section unless the
18 person is committed for a period of four days or longer.

19 (f) It is the intent of the Legislature that if all days are earned
20 under this section, a term of four days will be deemed to have been
21 served for every two days spent in actual custody.

22 (g) The changes in this section as enacted by the act that added
23 this subdivision shall apply to prisoners who are confined to a
24 county jail, city jail, industrial farm, or road camp for a crime
25 committed on or after the effective date of that act.

26 (h) The changes to this section enacted by the act that added
27 this subdivision shall apply prospectively and shall apply to
28 prisoners who are confined to a county jail, city jail, industrial
29 farm, or road camp for a crime committed on or after October 1,
30 2011. Any days earned by a prisoner prior to October 1, 2011,
31 shall be calculated at the rate required by the prior law.

32 (i) This section shall not apply, and no credits may be earned,
33 for periods of flash incarceration imposed pursuant to Section
34 ~~3000.08 1203.35, 3000.08, or 3454.~~